

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DANETTE G.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 23-6056-MLP

ORDER

I. INTRODUCTION

Plaintiff seeks review of the denial of her application for Disability Insurance Benefits.¹

Plaintiff contends the administrative law judge (“ALJ”) erred by misevaluating her testimony and medical opinion evidence. (Dkt. # 8.) As discussed below, the Court AFFIRMS the Commissioner’s final decision and DISMISSES the case with prejudice.

II. BACKGROUND

Plaintiff was born in 1970, has a high school education, and last worked as an office assistant. AR at 151, 1015. Plaintiff has not engaged in substantial gainful activity since the alleged onset date of April 2016. *Id.* at 1005.

¹ The Parties consented to proceed before the undersigned Magistrate Judge. (Dkt. # 3.)

1 In June 2018, Plaintiff applied for benefits, alleging disability as of April 2016. AR at
 2 1002. Plaintiff's applications were denied initially and on reconsideration, and Plaintiff requested
 3 a hearing. *Id.* at 160-61. After ALJ Rebecca Jones conducted hearings in October 2019 and
 4 August 2020, the ALJ issued a decision finding Plaintiff not disabled. *Id.* at 12-28, 35-125. As
 5 the Appeals Council denied Plaintiff's request for review, Plaintiff appealed the final decision of
 6 the Commissioner to this Court. *Id.* at 1147. In turn, this Court remanded the matter for further
 7 administrative proceedings. *Id.* at 1150. On remand, after ALJ Glenn Meyers conducted a
 8 hearing in March 2023, the ALJ issued a decision finding Plaintiff not disabled. *Id.* at 999.

9 Using the five-step disability evaluation process,² the ALJ found, in pertinent part,
 10 Plaintiff has the severe impairments of atypical face pain attributable to various diagnoses,
 11 migraine headaches, and anxiety disorder. AR at 1005. In turn, the ALJ determined that she was
 12 capable of performing light work with the following exceptions: she is capable of understanding,
 13 remembering, and executing simple instructions and tasks; can make simple work-related
 14 decisions; cannot engage in work that requires a specific production rate or hourly quotas; can
 15 have superficial incidental contact with the public; can frequently interact with coworkers and
 16 supervisors; can occasionally stoop, crouch, and climb ramps and stairs; cannot crawl, kneel, or
 17 climb ropes, ladders, or scaffolds; must avoid moderate exposure to extreme cold, vibration,
 18 dust, gases, odors, fumes, and smoke; cannot work at heights or near hazardous conditions; and
 19 cannot walk across uneven surfaces. *Id.* at 1008.

20 Plaintiff appealed the final decision of the Commissioner to this Court. (Dkt. # 1.)

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23 ² 20 C.F.R. § 404.1520.

III. LEGAL STANDARDS

Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of social security benefits when the ALJ’s findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a general principle, an ALJ’s error may be deemed harmless where it is “inconsequential to the ultimate nondisability determination.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (cited sources omitted). The Court looks to “the record as a whole to determine whether the error alters the outcome of the case.” *Id.*

“Substantial evidence” is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

IV. DISCUSSION

Plaintiff argues the ALJ erred by misevaluating the medical opinion of Dr. Jones and failing to consider Plaintiff's testimony about the limiting effect of her pain. The Commissioner argues the ALJ's decision is free of harmful legal error, supported by substantial evidence, and should be affirmed.

11

1 **A. The ALJ Did Not Err in Evaluating Plaintiff's Testimony**

2 Plaintiff testified that she suffered from severe and constant facial pain, headaches, and
 3 anxiety. *See, e.g.*, AR at 39-87, 302-10, 338-48, 374, 379, 383, 385, 1028-1073, 1076-1117,
 4 1434-37. She alleged difficulties with activities such as lifting, reaching, climbing, completing
 5 tasks, remembering things, concentrating, understanding, following instructions, and using her
 6 hands. *Id.* She opined being unable to think, speak, or answer questions, and testified that her
 7 pain frequently prevents her from completing household chores. *Id.* The ALJ summarized
 8 Plaintiff's allegations and discounted them, citing inconsistencies with her testimony and the medical
 9 evidence, as well as her activities. *Id.* at 1008-11.

10 Absent evidence of malingering, an ALJ is required to provide clear and convincing reasons
 11 to discount a claimant's testimony. *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014). This
 12 requires the ALJ to specify which parts of the testimony are not credible and explain what evidence
 13 contradicts it. *Laborin v. Berryhill*, 867 F.3d 1151, 1155 (9th Cir. 2017). However, the ALJ is not
 14 required to believe every claim of disabling pain, *Ahearn v. Saul*, 988 F.3d 1111, 1116 (9th Cir.
 15 2021), or to analyze the claimant's testimony line by line. *Lambert v. Saul*, 980 F.3d 1266, 1277 (9th
 16 Cir. 2020). "The standard isn't whether our court is convinced, but instead whether the ALJ's
 17 rationale is clear enough that it has the power to convince." *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th
 18 Cir. 2022).

19 Plaintiff argues that the ALJ erred by relying on normalized objective findings to dismiss
 20 her allegations of pain and fatigue. (Dkt. # 8 at 6.) She notes that unremarkable exam results are
 21 not inherently inconsistent with her allegations of fluctuating symptoms. (*Id.*) Despite Plaintiff's
 22 suggestion that the ALJ failed to consider the longitudinal record, the record reflects that the ALJ
 23 found the overall objective medical evidence inconsistent with the severe limitations Plaintiff
 described. AR at 1008-11. An ALJ may reject testimony where it is inconsistent with objective

1 medical evidence. *Smartt*, 53 F.4th at 498. Contrary to Plaintiff's testimony of debilitating and
 2 easily aggravated facial pain, the ALJ noted that treatment notes consistently observed her with
 3 normal and symmetric facial sensation, normal facial muscles and movement, no facial droop,
 4 and no facial nerve weakness (*id.* at 543, 556, 571, 576, 589, 1442); normal gait, strength, and
 5 coordination (*id.* at 509, 543, 562, 592, 716); and unremarkable mental status findings. *Id.* at
 6 489, 529, 547, 605, 621, 631, 633, 636, 1442, 1565, 1572-73. The ALJ's characterization of the
 7 record evidence is reasonable and Plaintiff has not specifically shown error in the ALJ's
 8 reasoning.

9 The Court thus cannot say the ALJ unreasonably selected only certain parts of the
 10 medical record that showed non-disability and disregarded other parts that showed disability.
 11 Instead, the ALJ weighed all of the evidence and found it did not support a disability finding.
 12 The ALJ is responsible for reviewing the evidence and resolving conflicts or ambiguities.
 13 *Magallanes*, 881 F.2d at 751. Moreover, the Ninth Circuit has repeatedly affirmed that when
 14 objective medical evidence in the record is inconsistent with Plaintiff's testimony, the ALJ may
 15 weigh it as undercutting such testimony. *See, e.g., Chaudhry v. Astrue*, 688 F.3d 661, 672-73
 16 (9th Cir. 2012) (affirming determination that interpreted and preferred objective medical
 17 evidence to subjective testimony); *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005)
 18 (affirming discounting of subjective claims of disabling pain based on objective medical
 19 evidence and daily activities); *Thomas*, 278 F.3d at 959 (same); *Osenbrock v. Apfel*, 240 F.3d
 20 1157, 1165-66 (9th Cir. 2001) (affirming rejection of allegations of disabling pain based on
 21 normal physical examinations).

22 Plaintiff also argues that the activities cited by the ALJ are neither legitimate proxies for
 23 her ability to work nor inconsistent with her testimony. (Dkt. # 8 at 6-7.) The ALJ observed that

1 Plaintiff drove more than an hour several times a week to ride her horse and take horseback
2 riding lessons, where she interacted with her trainer and other people. AR at 1011 (citing *id.* at
3 1085-92). The ALJ also noted that Plaintiff flew to Philadelphia to attend a family funeral and
4 reported that she did not have difficulty around others at the airport, during the flight, or on the
5 trip in general. *Id.* (citing *id.* at 1087-89). Furthermore, the ALJ found that Plaintiff's ability to
6 work after the alleged onset date inconsistent with her testimony. *Id.* at 1011. An ALJ may
7 consider evidence of employment during symptomatic periods in assessing Plaintiff's testimony.
8 *Ahearn*, 988 F.3d at 1117. Plaintiff testified that she worked one or two times a month at a
9 veterinary office front desk, where she worked the cash register, made appointments, and
10 handled administrative matters. *Id.* at 1089-90. The ALJ reasonably found these activities
11 undermined Plaintiff's complaints of disabling pain. *Id.* at 1011.

12 Plaintiff asserts that the ALJ erroneously focused on occasional or one-time activities,
13 without accounting for the limited manner in which she performed them. (Dkt. # 8 at 7.) This
14 misstates the ALJ's reasoning. The ALJ explicitly found that although these examples were more
15 flexible than engaging in work activities, they undermined her testimony about disabling facial
16 pain and aggravating factors. AR at 1008-11. An ALJ may use clear and convincing evidence,
17 including inconsistencies in the medical record and in statements about daily activities, to reject
18 symptom testimony. *Farlow v. Kijakazi*, 53 F.4th 485, 489 (9th Cir. 2022). Plaintiff's conclusory
19 challenge does not establish the ALJ erred in evaluating her activities of daily living, instead, it
20 simply asks the Court to adopt an interpretation more favorable to her claim. Even assuming the
21 evidence is susceptible to more than one rational interpretation, the Court cannot say that the
22 ALJ's interpretation was unreasonable. *See Burch*, 400 F.3d at 679 (9th Cir. 2005) (affirming
23 ALJ where evidence of daily activities was susceptible to more than one rational interpretation).

1 In sum, the ALJ discounted the severe limitations Plaintiff alleged because they were
2 inconsistent with her daily activities and generally benign mental and physical exam findings.
3 The ALJ's discussion of the evidence is reasonable and supported by substantial evidence. The
4 Court thus affirms the ALJ's evaluation of Plaintiff's testimony.

5 **B. The ALJ Did Not Err in Evaluating the Opinion of Nickolas Jones, Ph.D.**

6 Under regulations applicable to this case, the ALJ is required to articulate the
7 persuasiveness of each medical opinion, specifically with respect to whether the opinions are
8 supported and consistent with the record. 20 C.F.R. §§ 404.1520c(a)-(c). An ALJ's consistency
9 and supportability findings must be supported by substantial evidence. *See Woods v. Kijakazi*, 32
10 F.4th 785, 792 (9th Cir. 2022).

11 Consultative examiner Dr. Jones assessed that Plaintiff was limited in her ability to
12 interact with customers and co-workers. AR at 528-30. He noted she was likely to struggle in
13 work environments due to psychological disruptions and pain; and was likely to experience high
14 levels of absenteeism. *Id.* The ALJ discounted these parts of Dr. Jones' opinion as unsupported
15 and inconsistent with the record. *Id.* at 1013-14. Plaintiff argues that the ALJ erroneously
16 rejected Dr. Jones' opinion by comparing it to a "pre-determined" RFC. (Dkt. # 8 at 9-10.) To
17 this point, she highlights the ALJ's explanation that Dr. Jones' opinion was persuasive "to the
18 extent that it is consistent with the... limitations included in the above residual functional
19 capacity findings." (*Id.*) While it would be preferable for the ALJ to be as explicit as possible in
20 articulating reasons for discounting evidence, the use of "generic language is not itself reversible
21 error." *Trevizo v. Berryhill*, 871 F.3d 664, 678 n.6 (9th Cir. 2017). It becomes an issue only when
22 the ALJ fails to provide valid reasons supporting his conclusion. *Revels v. Berryhill*, 874 F.3d
23 648, 666 (9th Cir. 2017).

1 In this case, the ALJ considered Dr. Jones' opinion and found it unsupported by clinical
2 findings and inconsistent with Plaintiff's unremarkable mental status findings during the relevant
3 period. AR at 1013-14. Although the ALJ's reasoning could have been clearer, any error the ALJ
4 may have made is harmless because "the agency's path may reasonably be discerned." *Treichler*
5 *v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014) (citation and internal
6 quotation marks omitted). The ALJ found Dr. Jones' unremarkable observations insufficient to
7 support the severe limitations he opined, noted the opinion failed to describe functional
8 limitations or frequency, highlighted that the record did not corroborate Plaintiff's allegations of
9 significant limitations with interacting with people (AR at 1007), and relied on medical opinions
10 which opined that Plaintiff could have contact with the public. *Id.* at 1012-13 (citing *id.* at 134,
11 149). The Court may rely upon information cited by medical sources whose findings "the ALJ
12 clearly credited." *Warre v. Comm'r of Social Sec. Admin.*, 439 F.3d 1001, 1005 n.3 (9th Cir.
13 2006). Substantial evidence supports the ALJ's decision.

14 The ALJ also determined that Dr. Jones' opinion regarding Plaintiff's absenteeism and
15 ability to maintain employment were unsupported and inconsistent with the record. AR at 1014.
16 The ALJ pointed out that Dr. Jones' exam notes indicate Plaintiff was fully oriented and
17 cooperative, her speech was quick but easy to understand, her thoughts were fluid and easy to
18 track, her behavior was normal, she followed instructions, her memory was normal, and she had
19 good abstract and practical reasoning. *Id.* at 529-30. The ALJ found these findings inconsistent
20 with Dr. Jones' opinion but consistent with the longitudinal record, citing Plaintiff's generally
21 unremarkable mental status findings. *Id.* at 489, 509, 543, 547, 556, 562, 571, 576, 589, 605,
22 612, 621, 624, 631, 633, 636, 716, 1442, 1565, 1572-73. Notably, Plaintiff does not challenge the
23 ALJ's reasoning in this regard. Instead, Plaintiff contends the ALJ's decision is erroneous

1 because Dr. Jones' opinion relied on Plaintiff's pain, which she asserts the ALJ failed to
2 consider. (Dkt. # 8 at 11-12.) This argument is unavailing because the ALJ properly evaluated
3 this evidence, as the Court found earlier. *See Stubbs-Danielson v. Astrue*, 539 F.3d 1169,
4 1175-76 (9th Cir. 2008).

5 Because Plaintiff has failed to show that all the ALJ's reasons for discounting Dr. Jones'
6 opinion are erroneous, she has failed to meet her burden to show harmful error in the ALJ's
7 conclusion. *See Molina*, 674 F.3d at 1111 (burden of showing harmful error is on the party
8 attacking agency's determination). The ALJ's findings were reasonable and supported by
9 substantial evidence. *Thomas*, 278 F.3d at 954. Accordingly, the Court affirms the ALJ's
10 assessment of Dr. Jones' opinion.

V. CONCLUSION

12 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and this
13 case is **DISMISSED** with prejudice.

Dated this 10th day of June, 2024.


MICHELLE L. PETERSON
United States Magistrate Judge